

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

WILFORD L. GARDNER,
Plaintiff and Appellant,

v.

SCOTT R. HODGES, as Administrator, etc.,
Defendant and Respondent.

A153722

(City & County of San Francisco
Super. Ct. No. CGC-16-555203)

Plaintiff Wilford L. Gardner appeals a judgment awarding him an equitable lien in the amount of \$3,733.60 against real property belonging to the estate of Etoil Arata Cook, but denying his claim to quiet title to the property by adverse possession. He contends the trial court erred in granting the estate's motion for summary adjudication of his quiet title claim and alternatively, that the court erred in excluding from the lien \$831.92 in property taxes he paid after the present action was filed. We conclude that summary adjudication of the quiet title claim was improperly granted and shall therefore reverse the judgment and remand for further proceedings.

Background

Gardner is the nephew of Etoil Cook. Cecil Cook was Etoil's son and only heir.¹ In July 2005, Etoil invited Gardner to live with her in a home she owned on Ramsell Street in San Francisco. Gardner lived with and took care of Etoil until she died on March 7, 2008. With Cecil's knowledge, Gardner continued to live at the home after Etoil's death. Cecil did not probate his mother's estate. Cecil died in February 2013.

¹ For clarity, we refer to Etoil and Cecil Cook by their first names.

In July 2016, several children of Cecil's half-brother filed a petition for the administration of Cecil and Etoil's estates. Defendant Scott R. Hodges, a professional fiduciary, was appointed as administrator of both estates.

On November 7, 2016, Gardener filed the present action to quiet title by adverse possession or, alternatively, to establish an equitable lien. In October 2017, the court granted Hodge's motion for summary adjudication of the cause of action to quiet title by adverse possession. Following a court trial, the court found that Gardner was entitled to an equitable lien against the property in the amount of \$3,733.60, the amount of the real property taxes on the property that Gardner had paid before commencement of these proceedings. Judgment for that amount was entered in Gardner's favor. Gardner timely filed a notice of appeal.

Discussion

“ ‘To establish adverse possession, the claimant must prove: (1) possession under claim of right or color of title; (2) actual, open, and notorious occupation of the premises constituting reasonable notice to the true owner; (3) possession which is adverse and hostile to the true owner; (4) continuous possession for at least five years; and (5) payment of all taxes assessed against the property during the five-year period.’ ” (*Main Street Plaza v. Cartwright & Main, LLC* (2011) 194 Cal.App.4th 1044, 1054.) Code of Civil Procedure² section 325, subdivision (b) codifies the requirement that all taxes assessed against the property during the five-year period be “timely paid.”

Hodges moved for summary adjudication on the ground that Gardner could not establish two of the required elements. Hodges claimed that Gardner had not “timely paid” all taxes assessed against the property because the first installment of the 2012-2013 tax bill was delinquent on December 10, 2012, and not paid until April 8, 2013. Hodges also argued that Gardner cannot establish that his possession was hostile or adverse because until 2013, Gardner resided at the property with the permission of the owners. He relied on Gardner's deposition testimony that he had not discussed ownership

² All statutory references are to the Code of Civil Procedure unless otherwise noted.

of the property with Cecil and never told Cecil he was claiming the property by adverse possession. According to Hodges, Gardner's occupancy of the property from 2008 to 2013 was "explicitly or implicitly consented to by both of the Cooks." (Underscoring omitted.)

In opposition to the motion, Gardner submitted a declaration stating that he had paid all property taxes since Etoil died in 2008. He writes, "From 2008 through 2012, I paid the property taxes via Cecil Cook accepting my cash payment and then remitting his check. [¶] In 2012, although I had given Cecil Cook cash in the amount due for the 2012 property tax bill, and although he agreed to follow our usual procedure of writing his check to the . . . Tax Collector to remit my payment, apparently he fell ill and died. [¶] After the death of Cecil Cook, I learned that Cecil Cook had not sent in my payment for the 2012-2013 property tax bill. Immediately upon learning this, I remitted payment of the tax bill (and penalty)." ³ His declaration also states, "I told Cecil Cook that I intended to continue exclusive, sole possession and occupancy of the subject premises shortly after Etoil Cook's death. Thereafter, Cecil Cook moved all of Etoil Cook's personal property . . . (including household furniture and furnishings) out of said premises to Cecil Cook's own residence in East Palo Alto. I then purchased new furniture." Gardner also added a new lock to the premises, giving a key to no one else, and placed all of the utilities into his name. His opposition to the summary adjudication motion also includes declarations from a contractor who, believing Gardner was the owner, performed and was paid by Gardner for repairs and improvements on the property, and from a neighbor who was told by Gardner "many times" that the home was his.

³ For purposes of this motion, the undisputed evidence established that Cecil timely paid the 2008-2009, 2009-2010, 2010-2011, 2011-2012 tax bills on Gardner's behalf (see *Gray v. Walker* (1910) 157 Cal. 381, 386 [payment can be made either by the adverse claimant or by someone else on his behalf]) and that Gardner himself timely paid the second installment on the 2012-2013 tax bill, as well as the 2013-2014, 2014-2015, 2015-2016 and 2016-2017 tax bills.

In granting defendant's motion for summary adjudication, the court found that Gardner had not timely paid all taxes as required by section 325, subdivision (b) and that Gardner failed to raise a triable issue of fact as to "the assertion of a hostile claim and actual or constructive notice" sufficient to establish adverse possession in a "family context."

"We review an order granting summary judgment de novo. [Citation.] The trial court's stated reasons for granting summary judgment are not binding because we review its ruling not its rationale." (*Canales v. Wells Fargo Bank, N.A.* (2018) 23 Cal.App.5th 1262, 1268.)

1. Payment of property taxes

Section 325, subdivision (b) provides, "In no case shall adverse possession be considered established under the provision of any section of this code, unless it shall be shown," among other things, that "the party or persons, their predecessors and grantors, have timely paid all state, county or municipal taxes that have been levied and assessed upon the land for the period of five years during which the land has been occupied and claimed. Payment of those taxes by the party or persons, their predecessors and grantors, shall be established by certified records of the county tax collector." "Whether an adverse claimant (or his or her predecessors or grantors) has paid all of the taxes as required is generally a question of fact. The claimant has the burden of proving payment of all of the taxes levied and assessed during each year of the prescriptive period" (6 Miller & Starr, Cal. Real Estate (4th ed. 2018) § 18:23.)

Gardner contends the trial court erred in interpreting the phrase "timely paid" in section 325, subdivision (b) to exclude consideration of his payment of the first installment of the 2012-2013 tax bill. In *McLear-Gary v. Scott* (2018) 25 Cal.App.5th 145, the court observed that section 325, subdivision (b) was amended in 2010 to include the "timely paid" requirement "to prevent adverse possessors from satisfying the tax payment requirement with a lump sum payment of delinquent taxes" as was previously allowed under long-standing case law. (*Id.* at pp. 154-155, citing *Owsley v. Matson*

(1909) 156 Cal. 401, 405 [tax payment is timely for adverse possession purposes if made during any continuous five-year period of possession.].) The court interpreted section 325, subdivision (b) as requiring adverse possession claimants “to establish, by certified records of the tax collector, that they made timely payments continuously each year throughout the statutory period.” (*McLear-Gary v. Scott, supra*, at p. 156, italics omitted.) We agree with that court that to be timely paid within the meaning of section 325, subdivision (b), the property tax payments must be made “continuously each year throughout the statutory period.” The 2010 statutory amendments were intended to preclude consideration of a lump-sum payment for multiple years, not to disallow a single payment received beyond the delinquency date because of unusual circumstances such as occurred here.

The Senate Judiciary Committee analysis of Assembly Bill No. 1684 indicates that section 325 was amended to address concerns of “recent years about the practice of speculators making tax payments on rural parcels of land in hopes of building a claim for title to the land. Those speculators reportedly attempt to make a lump-sum tax payment on a parcel with an outstanding tax obligation and then claim to have met the other criteria for adverse possession. In response to concerns about that practice, this bill would require taxes to be paid timely over the previous five years and clarify that payment is to be established by the certified records of the county tax collector.” (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1684 (2009-2010 Reg. Sess.) as amended Mar. 11, 2010; see also Paul Yoder, Cal. Assn. of County Treasurers and Tax Collectors, letter to Assem. Jud. Com., Feb. 23, 2010 [announcing association’s sponsorship and support of Assem. Bill No. 1684 because it requires “documentation of the payment of property taxes continuously for five years, and not just a one-time payment of five years’ worth of property taxes”].)

The committee analysis continues, section 325 “states that adverse possession cannot be established without a showing that the land has been continuously occupied for five years and all taxes have been paid. By requiring those taxes to be paid ‘timely,’ this bill would prevent a party that otherwise meets the criteria for adverse possession from

making a one-time payment to satisfy the existing tax requirement. [¶] Although the requirement to ‘timely’ pay taxes may prevent the establishment of adverse possession for certain individuals, it appears consistent with the policy reasons for adverse possession initially. As noted above, adverse possession acts to clear title after a period of time based upon the principle of laches. The doctrine is not intended to be a tool for one to abuse (as emphasized by the need for possession to be ‘open and notorious’ and hostile to the true owner), it is one that allows an individual who truly believes they own the property to perfect title. Consistent with those requirements, California law already requires the payment of taxes – the clarification that payment of taxes must be timely would address issues raised by the sponsor regarding fraud and be consistent with existing policy that applies adverse possession in situations where the individual is truly acting like the owner of the property. [¶] While there could be a subset of ‘legitimate’ adverse possessors who are unable to establish title because of one or two late (not timely) tax payments, those individuals would just have to wait until they have made timely payments for a period of five years (provided that all the other requirements were met). As a result, the present structure of the bill encourages the timely payment of taxes for anyone who may consider filing a claim for adverse possession.”

The analysis of the Assembly Judiciary Committee is to the same effect. The Assembly analysis states that the “key issue” is whether “a person claiming title to land as an adverse possessor be required to prove by certified records of the county tax collector, that he or she has paid all taxes levied upon the property continuously throughout the required five-year period.” Though mentioning the timely payment requirement, the report summarizes the bill as follows: “Provides that annual payment of taxes, which is already a required element of adverse possession in California, must be established by certified records of the county tax collector and show that the taxes were paid continuously throughout the five-year statutory period.” (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 1684, *supra*, as amended Mar. 11, 2010.)

Recognizing Gardner’s timely delivery to Cecil Cook of funds for payment of the 2012-2013 installment then due as sufficient to satisfy the requirements of section 325,

subdivision (b) is consistent with the statutory purpose of precluding consideration of one-time lump-sum payments. Since the tax was paid to the tax collector in April 2013, before the next installment became delinquent, the objective of providing notice to any other person who might claim an interest in the property was satisfied.⁴ Most important, recognizing the timeliness of Gardner's payment for this purpose is consistent with the over-riding statutory purpose of "appl[ying] adverse possession in situations where the individual is truly acting like the owner of the property." (See Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1684, *supra*, as amended Mar. 11, 2010.) In opposition to the summary adjudication motion, Gardner submitted certified records of the tax collector showing that the taxes had in fact been paid continuously over the five year statutory period, satisfying the directive of the statute that "[p]ayment of those taxes by the party" be established with those records. While the analysis of the Senate Judiciary Committee does indicate that a single late payment could preclude compliance with the timely payment requirement, that statement was not addressed to the unique situation involved here, where a single payment was timely delivered to the person who normally forwarded the payment to the tax collector but who died before transmitting the funds. Delivery of the funds to the former owner may be considered constructive payment of the tax (see *Gray v. Walker*, *supra*, 157 Cal. at p. 386), and in all events the single payment that reached the tax collector beyond the delinquency date is fundamentally different from a lump sum payment of taxes for multiple years that the statute was designed to exclude. Gardner unquestionably paid the property taxes continuously over a course of more than five years; refusing to recognize his adverse possession because of the unusual circumstances that delayed receipt of a single payment would disregard the fundamental

⁴ The Senate analysis at one point states that Assembly Bill No. 1684 "is a simple, minor change in current law. It seeks to reinforce rightful land owners' claim to their own lands by requiring an adverse possessor's tax payments on another owner's land to be established by certified records of the county tax collector. This action will enable rightful landowners to be made further aware [of] an adverse possession action against their land."

objective of “allow[ing] an individual who truly believes they own the property to perfect title.” (See Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1684, *supra*, as amended Mar. 11, 2010.) Such a formalistic result would be entirely unjust and at odds with the purposes of the statute.

II. *Hostile Possession*

A triable issue of fact exists as to whether Gardner’s possession was hostile and adverse to Cecil’s interest in the property. “Hostility” means that the claimant’s possession is adverse to the record owner unaccompanied by express or inferred recognition of the record owner’s rights. (*Buic v. Buic* (1992) 5 Cal.App.4th 1600, 1605.) Special factors come into play when a person takes possession of property with the consent of the owner. Under that circumstance, the party seeking to establish title through adverse possession must make an “unqualified and definite renunciation” of the owner’s rights. (*Southern Pac. Co. v. San Francisco* (1964) 62 Cal.2d 50, 56.) Similar stringent rules apply when a party seeks to establish adverse possession against a close family member. In that case, possession will not be considered adverse to the owner absent a clear showing of the hostile claim. (*Lobro v. Watson* (1974) 42 Cal.App.3d 180, 186.)

Here, although the parties dispute the closeness of Gardner’s relationship with Cecil, the evidence is undisputed that he took possession of the property with Etoil’s consent and remained in possession of the property with Cecil’s knowledge. It was his burden to present evidence sufficient to raise a triable issue of fact as to whether he clearly and unqualifiedly asserted his hostile intent and renounced Cecil’s right of ownership. Gardner presented evidence that he told Cecil that he intended “to continue exclusive, sole possession and occupancy” of the home and that thereafter Cecil removed all of Etoil’s furniture from the residence.⁵ Gardner’s declaration further asserts,

⁵ Contrary to Hodge’s suggestion, Gardner’s declaration does not conflict with his prior deposition testimony in which he said that he and Cecil did not “have any discussions . . . about the ownership of the house” and he did not tell Cecil that he was “claiming the property by adverse possession.” In his declaration he explains, “To clarify my deposition response concerning discussions with Cecil Cook, I did discuss with him that I was going

“Following the 2008 death of Etoil Cook, I secured the said premises for my sole possession by adding a second, new lock to the front door of the said premises. I never gave a key to the new, second lock to Cecil Cook or anyone else.” In addition to paying all of the property taxes, Gardner placed all of the utilities into his name and he arranged and paid for repairs and improvements on the property. The contractor who performed those repairs provided a declaration stating that “[f]rom and after 2011 to date, Wilford Gardner has retained my contracting services to make repairs and improvements to his home [¶] By our discussions and his occupancy, I understood Wilford Gardner to be the owner of [the home] at all times since we first met in 2011.” And a long-time neighbor submitted a declaration stating that through his conversations with Gardner he “was informed many times that [the home] was and is Mr. Gardner’s property.” The record does not indicate that Cecil attempted to protect his interest in the property in any way. At a minimum, this evidence raises a triable issue of fact as to Gardner’s hostile possession of the property.

Because we conclude that the court erred in summarily adjudicating Gardner’s adverse possession claim, we need not reach his alternative arguments regarding the proper amount of an equitable lien.

Disposition

The judgment is reversed and the matter remanded for further proceedings.

POLLAK, P. J.

WE CONCUR:

TUCHER, J.
BROWN, J.

to keep possession of the . . . premises, but I did not use the legal term ‘adverse possession’ with Cecil Cook or anyone else because I did not know the meaning of ‘adverse possession’ at the time.”